PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: Steven A. LaPierre)	Conf. No.: 8794
)	
Application No.: 09/679,813)	Group Art Unit: 3624
)	
Filed: October 5, 2000)	Examiner: Charles, Debra F.
)	
FOR: A SYSTEM AND METHOD FOR)	
ELECTRONIC TRADING OF ASSETS)	
)	

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Pursuant to 37 CFR §41.37, Applicant hereby submits an Appeal Brief in connection with this application. This Appeal Brief is being submitted within two months of the date of filing of the Notice of Appeal under 37 CFR §41.31, and is accompanied by the fee set forth in 37 CFR §41.20(b)(2).

EXPRESS MAIL CERTIFICATE (37 C.F.R. § 1.10)

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I hereby certify that this paper, and the papers and/or fees referred to herein as transmitted, submitted or enclosed, are being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed to Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Name __Daniel H. Golub__   Signature_____

I. Real Party in Interest

The real party in interest is Novaplex Technologies, Inc., the assignee of all right, title and interest in the above-referenced patent application.

II. Related Appeals and Interferences

There are no prior or pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or the assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1-7, 12-16 and 19 stand rejected under 35 USC §103(a) as being unpatentable over Harpale (US 2002/0032579A1) and Togher et al. (US 6,014,627 A).

Claims 8 and 9 stand rejected under 35 USC §103(a) as being unpatentable over Harpale (US 2002/0032579A1) and Togher et al. (US 6,014,627 A), and further in view of Grosh et al. (US 6,195,646 B1).

Claim 10 stands rejected under 35 USC §103(a) as being unpatentable over Harpale (US 2002/0032579A1) and Togher et al. (US 6,014,627 A), and further in view of Gonda et al. (US 6,662,221 B1).

Claim 11 stands rejected under 35 USC §103(a) as being unpatentable over Harpale (US 2002/0032579A1) and Togher et al. (US 6,014,627 A), and further in view of Natarajan et al. (US 6,584,502 B1).

Claims 17 and 18 stand rejected under 35 USC §103(a) as being unpatentable over

Harpale (US 2002/0032579A1) and Togher et al. (US 6,014,627 A), and further in view of

Brezak, Jr. et al. (US 6,401,211 B1).

All pending claims (i.e., claims 1-19) are being appealed.

IV. Status of Amendments

No amendment has been filed subsequent to the final rejection dated November 4,

2005.

V. Summary of Claimed Subject Matter

Independent claim 1 is directed to a method for online trading of assets via

transactionally linked virtual markets (p. 5, line 20 – p. 6, line 5; and p. 16, lines 11-14

(examples of markets)). The claimed method includes defining attributes and behaviors of

virtual markets (p. 20, lines 18-19; and Fig. 6, system 600), placing individual buy and sell

orders in the virtual markets, (p. 20, lines 21-22; Figure 6, element 602) and defining at least

one unified cross-market trading strategy that includes at least a first order in a first virtual

market and a second order in a second virtual market (p. 20, lines 22-23; Figure 6, elements

600, 602, 608; p. 25, line 10 – p. 26, line 22; and Figs. 8-10). Based on the unified cross-

market trading strategy, a price and an amount for the first order in the first virtual market is

automatically calculated based on a price and an amount of one or more orders in the second

virtual market (p. 26, line 2 – p. 30, line 13; and Figs. 10-13). Based on the unified cross-

market trading strategy, a price and an amount for the second order in the second virtual

market is automatically calculated based on a price and an amount of one or more orders in

the first virtual market (p. 30, lines 14-15, and Figs. 12-13). The first and second orders are

automatically routed to their respective virtual markets, and both individual orders and orders

generated by cross-market trading strategies for virtual markets are automatically matched

and executed (p. 20, line 20- p. 21, line 3, Fig. 6, elements 602, 604, 606, 608). At least part

of the method is performed on one or more computer systems (Fig. 6, element 600).

Independent claim 12 recites a system for online trading of assets via transactionally

linked virtual markets (p. 5, line 20 – p. 6, line 5; p. 16, lines 11-14 (examples of markets), p.

20, line 15-p. 21, line 3; Figure 6, elements 602, 604, 606, 608). The system includes a

market creation mechanism to enable users to create a plurality of virtual markets (p. 20,

lines 18-19; Figure 6, system 600 and elements 602, 604, 606, 608); a plurality of active

market servers (element 606 of Fig. 6) to support the operation of each of the created virtual

markets; an order creation mechanism to allow users to create, buy, or sell orders related to

the virtual markets (element 602 of Fig. 6); a strategy creation mechanism to enable users to

define cross-market trading strategies and specify the virtual markets referenced by the cross-

market trading strategies, wherein the cross-market trading strategies comprise at least one

unified cross-market trading strategy that includes at least a first order in a first virtual

market and a second order in a second virtual market (p. 20, lines 22-23; Figure 6, elements

600, 602, 608; p. 25, line 10 – p. 26, line 22; and Figs. 8-10). A plurality of active strategy

servers (element 608, Fig. 6; p. 20, line 22-p. 21, line 3) generate new orders on behalf of the

specified cross-market trading strategies and dynamically coordinate with the plurality of

active market servers to continuously monitor relationships between virtual markets and

modify orders generated on behalf of cross-market trading strategies; wherein at least one of

the servers automatically calculates, based on the unified cross-market trading strategy, a

price and an amount for the first order in the first virtual market based on a price and an

amount of one or more orders in the second virtual market (p. 26, line 2 – p. 30, line 13, Figs.

10-13); and at least one of the servers automatically calculates, based on the unified cross-

market trading strategy, a price and an amount for the second order in the second virtual

market based on a price and an amount of one or more orders in the first virtual market (p.

30, lines 14-15; and Figs. 12-13). A linking mechanism enables orders and counterorders

from different servers to be linked (element 600, Fig. 6).

Independent claim 19 recites a system for online trading of assets via transactionally

linked virtual markets (p. 5, line 20 – p. 6, line 5; p. 16, lines 11-14 (examples of markets), p.

20, line 15-p. 21, line 3; Figure 6, elements 602, 604, 606, 608). A plurality of client systems

is provided for entering orders by a client (p. 20, lines 18-22; and Fig. 6, element 602). A

plurality of order routers (Fig. 6, element 604) are provided for determining which market for

an existing plurality of markets the order is in and transmitting the order to a market server

(Fig. 6, element 606). A plurality of market servers is provided for matching the order with

existing counterorders and monitoring the plurality of markets (Fig. 6, element 606). A

plurality of strategy servers (Fig. 6, element 608) is provided for generating new orders, and

routing the generated orders to each market defined in a trading strategy and coordinating

with the plurality of market servers to insure atomic execution of all orders that make up the

trading strategy (p. 21, line 4 – page 23, line 23). At least one of the servers automatically

calculates, based on a unified cross-market trading strategy, a price and an amount for a first

order in a first virtual market based on a price and an amount of one or more orders in a

second virtual market (p. 26, line 2 – p. 30, line 13, and Figs. 10-13). At least one of the

servers automatically calculates, based on the unified cross-market trading strategy, a price

and an amount for a second order in the second virtual market based on a price and an

amount of one or more orders in the first virtual market (p. 30, lines 14-15, Figs. 12-13).

VI. Grounds of Rejection to be Reviewed on Appeal

Appellant respectfully requests review on Appeal of the Examiner's rejection of

Independent Claims 1, 12 and 19 under 35 USC §103(a) as being unpatentable over Harpale

(US 2002/0032579A1) and Togher et al. (US 6,014,627 A).

VII. Argument

Independent claims 1, 12 and 19 stand rejected under 35 U.S.C. § 103(a), as being

unpatentable over U.S. Patent Publication No. 2002/0032579 to Harpale in view of

U.S.Patent No. 6,014,627 to Togher et al. In response to the Examiner's rejection of the

claims, Applicant respectfully asserts that the pending claims are allowable over the cited

references because the Examiner has failed to establish a *prima facie* case of obviousness.

The MPEP states, in relevant part:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. MPEP § 2142.

The Examiner has failed to show that Harpale and Togher, alone or in combination, teach all of the elements of claims 1, 12 or 19.

Pending independent claim 1 recites: *inter alia*, "[a] method for online trading assets via transactionally linked virtual markets comprising ... defining at least one unified cross-market trading strategy that includes at least a first order in a first virtual market and a second order in a second virtual market; automatically calculating, based on the unified cross-market trading strategy, a price and an amount for the first order in the first virtual market based on a price and an amount of one or more orders in the second virtual market; [and] automatically calculating, based on the unified cross-market trading strategy, a price and an amount for the second order in the second virtual market based on a price and an amount of one or more orders in the first virtual market." Similar limitations appear in independent claims 12 and 19.

The Examiner has acknowledged that none of the limitations underlined above are shown in Harpale. Moreover, Applicant has carefully reviewed Togher et al., and it is respectfully submitted that Togher et al. similarly fails to teach or suggest the limitations underlined above. In asserting that Togher et al. teaches the limitations underlined above, the Examiner has cited to Col. 1, lines 20-67, col. 7, lines 5-67, and col. 10, lines 1-55 of Togher.

None of these provisions discuss cross-market trading, let alone a unified cross-market

trading strategy, as required by all pending independent claims.

The Examiner's assertion that Togher et al. meets Applicant's claimed unified cross-

market strategy limitations is based on the following reasoning:

> ... Togher et al. disclose(s) a price arbitrage systems (sic) that
> functions across markets (currency trading is <u>inherently</u> cross
> market) ... Official Action dated Nov. 5, 2005, at 4 (Emphasis
> added).

Applicant disagrees with the Examiner's assertion that "currency trading is <u>inherently</u>

cross market." The standard for an inherency rejection is set forth in §2112 of the MPEP:

> The fact that a certain result or characteristic <u>may</u> occur or be present in the
> prior art is not sufficient to establish the inherency of that result or
> characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957
> (Fed. Cir. 1993) (reversed rejection because inherency was based on what
> would result due to optimization of conditions, not what was necessarily
> present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323,
> 326 (CCPA 1981). <u>"To establish inherency, the extrinsic evidence 'must make
> clear that the missing descriptive matter is necessarily present in the thing
> described in the reference, and that it would be so recognized by persons of
> ordinary skill. Inherency, however, may not be established by probabilities or
> possibilities</u>. The mere fact that a certain thing may result from a given set of
> circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49
> USPQ2d 1949, 1950-51 (Fed. Cir. 1999) ... Also, "[a]n invitation to
> investigate is not an inherent disclosure" where a prior art reference "discloses
> no more than a broad genus of potential applications of its discoveries."
> *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1367, 71
> USPQ2d 1081, 1091 (Fed. Cir. 2004) ...

> "In relying upon the theory of inherency, <u>the examiner must provide a basis in
> fact and/or technical reasoning to reasonably support the determination</u> that
> the allegedly inherent characteristic <u>necessarily</u> flows from the teachings of
> the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. &
> Inter. 1990) (emphasis in original) (Applicant's invention was directed to a
> biaxially oriented, flexible dilation catheter balloon (a tube which expands
> upon inflation) used, for example, in clearing the blood vessels of heart
> patients). The examiner applied a U.S. patent to Schjeldahl which disclosed
> injection molding a tubular preform and then injecting air into the preform to

expand it against a mold (blow molding). The reference did not directly state that the end product balloon was biaxially oriented. It did disclose that the balloon was "formed from a thin flexible inelastic, high tensile strength, biaxially oriented synthetic plastic material." *Id.* at 1462 (emphasis in original). The examiner argued that Schjeldahl's balloon was inherently biaxially oriented. The Board reversed on the basis that the examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.).

It is respectfully submitted that the Examiner has failed to provide a basis in fact and/or technical reasoning to reasonably support the assertion that "currency trading is inherently cross market." Moreover, and as explained by Applicant in the Specification, it is clearly possible to implement currency trading in a single market. In this regard, Applicant respectfully directs the Board's attention to the description of "Market" set forth in the Patent Specification:

> ... Examples of Markets are a spot foreign exchange market for exchanging currencies, a market to trade options, interest rates, futures, commodities. ... Specification at p. 16, lines 11-14 (Emphasis added).

Simply put, for purposes of the present invention, foreign exchange trading like that described in Togher (where one currency is exchanged for a different currency) corresponds to trading in a single market, rather than "cross-market" trading as suggested by the Examiner. Simply put, the Examiner's reasoning that "currency trading is inherently cross market" must fail because there are clearly ways to implement currency trading in a single market, as explained by Applicant in the Specification.

One example of a cross-market trading strategy in accordance with the present invention is described at page 21, lines 9-13, of the Specification, and involves multiple simultaneously active markets, i.e., a spot foreign exchange market for trading Euros (EUR)

in exchange for U.S. Dollars (USD), a spot foreign exchange market for trading USD in

exchange for Japanese Yen (JPY), and a spot foreign exchange market for trading EUR in

exchange for JPY. By contrast, Togher et al. is limited to trading within a single currency

market, e.g., see discussion of market for exchanging USD and German marks (DEM) set

forth at col. 7, lines 41-45 of Togher et al.

As discussed more fully in the Specification, the present invention allows for creation

and execution of trading strategies that span multiple markets, such as the EUR/USD,

USD/JPY and EUR/JPY markets mentioned above. For example, pages 25-26 of the

Specification describe part of one such cross-market trading strategy as follows:

> "The strategy (called "FX Arbitrage Strategy") is defined as an
> arbitrage strategy that has a required Return On Investment (ROI) of
> "1/10%", a Profit Location (the asset/date "bucket" where the resulting
> ROI ends up) of "USD Spot", and is comprised of three Strategy Items:
> Item #1 is a sell item linked to Market A (EUR/USD Spot FX), Item #2
> is a sell item linked to Market B (USD/JPY Spot FX), and Item #3 is a
> buy item linked to Market C (EUR/JPY Spot FX).
> When activated, a strategy must first identify the best existing
> counterorder for each of its Items. For Item #1, the best counterorder
> would be order #1, a buy order in Market A having a price of 1.0235 and
> a size of 1,000,000. For Item #2, the best counterorder would be order
> #3, a buy order in Market B having a price of 103.15 and a size of
> 3,000,000. For Item #3, the best counterorder would be order #6, a sell
> order in Market C having a price of 105.50 and a size of 2,000,000....
> Once the strategy has identified the counterorder for each of its
> Items, it can then calculate the price and amount for the order it will place
> on behalf of each Item. Item #1 is defined as having a price formula of
> (C.BestPrice / B.BestPrice) x 1.001. This means that to calculate the
> price for the order which will be placed on behalf of Item #1, the strategy
> must take the best sell price (the price of the best counterorder) from
> Market C, divide it by the best buy price from Market B, and then
> multiply the result by 1.001 to build in the required Return On
> Investment of 1/10%. (If the Item were a buy Item, the price would be
> *divided* by 1.001 to build in the required ROI). The calculated price
> would therefore be equal to 1.02380514 ....

Since this Item is a sell Item and the strategy will therefore be placing a sell order on its behalf, the order price must be rounded up to the number of decimal places which are conventionally used when placing orders in the EUR/USD Spot FX Market (four places to the right of the decimal), making the final order price 1.0239. Conversely, for buy Items, the price would be rounded down. This process will be repeated by the strategy for each of its other two Items, resulting in the calculated prices illustrated in Figure 10. Thus, Item #2 is defined as having a price formula of (C.BestPrice/A.BestPrice) x 1.001, which is equal to 103.180752. Item #3, which is a buy item, and thus is defined as having a price formula of (A.BestPrice x B.BestPrice)/1.001, or (1.0235 x 103.15)/1.001= 105.468556. ...

It is clear that neither Harpale nor Togher et al., alone or in combination, teach cross-market trading functionality as presently claimed. Applicant therefore respectfully requests reversal of the Examiner rejection of claims 1, 12 and 19 over Harpale nor Togher et al.

VIII. Claims Appendix

1. (Previously Presented) A method for online trading assets via transactionally linked virtual markets comprising the steps of:

defining attributes and behaviors of virtual markets;

placing individual buy and sell orders in the virtual markets;

defining at least one unified cross-market trading strategy that includes at least a first order in a first virtual market and a second order in a second virtual market;

automatically calculating, based on the unified cross-market trading strategy, a price and an amount for the first order in the first virtual market based on a price and an amount of one or more orders in the second virtual market;

automatically calculating, based on the unified cross-market trading strategy, a price and an amount for the second order in the second virtual market based on a price and an amount of one or more orders in the first virtual market;

automatically routing the first and second orders to their respective virtual markets; and

automatically matching and executing both individual orders and orders generated by cross-market trading strategies for virtual markets;

wherein at least part of the method is performed on one or more computer systems.

2. (Previously Presented) The method of claim 1, wherein the attributes and behaviors of the virtual markets include asset types, payment dates, and payment factors.

3. (Previously Presented) The method of claim 1, wherein the attributes and behaviors of the virtual markets replicate those of conventional markets.

4. (Previously Presented) The method of claim 1, wherein the step of placing an individual buy and sell order includes specifying a total size of the order, a minimum allowable size of a partial execution of the order, a portion of the total size of the order that will be visible to others, and an indication of which of the virtual markets the order is for, and the price of the order.

5. (Previously Presented) The method of claim 1, wherein the step of defining at least one unified cross-market trading strategy further comprises the step of specifying a type of trading strategy.

6. (Previously Presented) The method of claim 5, wherein the type of cross-market trading strategy is selected from the group consisting of: arbitrage, basket, and hedge.

7. (Previously Presented) The method of claim 1, wherein the step of defining at least one unified cross-market trading strategy further comprises the step of specifying the virtual markets referenced by the cross-market trading strategy.

8. (Previously Presented) The method of claim 1, wherein the step of defining at least one unified cross-market trading strategy further comprises the step of defining formulae to

calculate prices and amounts for each virtual market referenced by the cross-market trading strategy based upon counterorders from other virtual markets.

9. (Previously Presented) The method of claim 8, wherein the step of defining formulae to calculate further comprises the step of identifying a best counterorder for each initial buy or sell order.

10. (Previously Presented) The method of claim 1, wherein the step of defining at least one unified cross-market trading strategy further comprises the step of automatically generating new orders on behalf of the defined cross-market trading strategy.

11. (Previously Presented) The method of claim 1, wherein the step of matching and executing both individual orders and orders generated by cross-market trading strategies comprises the step of automatically and continuously modifying orders as needed on behalf of defined cross-market trading strategies in response to changes in the virtual markets referenced by the cross-market trading strategies.

12. (Previously Presented) A system for online trading of assets via transactionally linked virtual markets comprising

       a market creation mechanism to enable users to create a plurality of virtual markets;

       a plurality of active market servers to support the operation of each of the created virtual markets;

an order creation mechanism to allow users to create, buy, or sell orders related to the virtual markets;

a strategy creation mechanism to enable users to define cross-market trading strategies and specify the virtual markets referenced by the cross-market trading strategies, wherein the cross-market trading strategies comprise at least one unified cross-market trading strategy that includes at least a first order in a first virtual market and a second order in a second virtual market;

a plurality of active strategy servers to generate new orders on behalf of the specified cross-market trading strategies and to dynamically coordinate with the plurality of active market servers to continuously monitor relationships between virtual markets and modify orders generated on behalf of cross-market trading strategies; wherein at least one of the servers automatically calculates, based on the unified cross-market trading strategy, a price and an amount for the first order in the first virtual market based on a price and an amount of one or more orders in the second virtual market; and at least one of the servers automatically calculates, based on the unified cross-market trading strategy, a price and an amount for the second order in the second virtual market based on a price and an amount of one or more orders in the first virtual market; and

a linking mechanism to enable orders and counterorders from different servers to be linked.

13. (Previously Presented) The system of claim 12, comprising:

an adapter that enables external systems to link into the system so that users in the

system may select from and share orders with external liquidity sources;

an order validation mechanism; and

a credit limit validation mechanism.

14. (Previously Presented) The system of claim 13, wherein the order validation mechanism

allows a host site to establish trading limits for the host site's accounts.

15. (Previously Presented) The system of claim 14, wherein the order validation mechanism

validates each created new order against the trading limits, and once validated, sends the new

order to at least one of the plurality of virtual markets.

16. (Previously Presented) The system of claim 13, wherein the credit limit validation

mechanism allows host sites to establish mutual lines of credit for specified markets and use

these lines of credit to act as guarantors when matching orders that originate from different

host sites.

17. (Previously Presented) The system of claim 13, further comprising a plurality of access

control servers to authenticate each user.

18. (Previously Presented) The system of claim 17, wherein the plurality of access control

servers determine an authorized level of system access granted to each user before allowing

each user to access the system.

19. (Previously Presented) A system for online trading of assets via transactionally linked virtual markets comprising:

a plurality of client systems for entering orders by a client;

a plurality of order routers for determining which market for an existing plurality of markets the order is in and transmitting the order to a market server;

a plurality of market servers for matching the order with existing counterorders and monitoring the plurality of markets; and

a plurality of strategy servers for generating new orders, and routing the generated orders to each market defined in a trading strategy and coordinating with the plurality of market servers to insure atomic execution of all orders that make up the trading strategy; wherein at least one of the servers automatically calculates, based on a unified cross-market trading strategy, a price and an amount for a first order in a first virtual market based on a price and an amount of one or more orders in a second virtual market; and at least one of the servers automatically calculates, based on the unified cross-market trading strategy, a price and an amount for a second order in the second virtual market based on a price and an amount of one or more orders in the first virtual market.
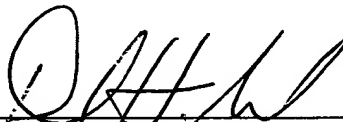
)

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Director is hereby

authorized by this paper to charge any additional fees during the entire pendency of this

application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required,

including any required extension of time fees, or credit any overpayment to Deposit

Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR**

EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully Submitted,
Morgan Lewis & Bockius LLP

Date: June 29, 2006   By: _____

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: _Steven A. LaPierre_
Application No.: _09 167,813_   Group No.: _3624_
Filed: _October 5, 2000_   Examiner: _Charles, Debra F._
For: _A System And Method_   Reexamination control No.:
For Electronic Trading of Assets

Mail Stop Appeal Brief—Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION OR EX PARTE REEXAMINATION—
37 C.F.R. § 41.37)

NOTE: *The phrase "the date on which" an "appeal was taken" in 35 U.S.C. 154(b)(1)(A)(ii) (which provides an adjustment of patent term if there is a delay on the part of the Office to respond within 4 months after an "appeal was taken") means the date on which an appeal brief under § 1.192 (and not a notice of appeal) was filed. Compliance with § 41.37 requires that: 1. the appeal brief fee (§ 41.20(b)(2)) be paid (§ 41.37(a)(2)); and 2. the appeal brief complies with §§ 41.73(c)(i)-(x). See Notice of September 18, 2000, 65 Fed. Reg. 56366, 56385-56387 (Comment 38).*

1. Transmitted herewith is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on _May 3, 2006_

NOTE: *Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31. 37 CFR 41.(a)(1). The brief is no longer required in triplicate. The former alternative time for filing a brief (within the time allowed for reply to the action from which the appeal was taken)*

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*
(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

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37 C.F.R. § 1.8(a)   **37 C.F.R. § 1.10 ***

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Signature

Date: _06/29/06_

Daniel H. Golub
(type or print name of person certifying)

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* *Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.*

2. STATUS OF APPLICANT

This application is on behalf of

☐ other than a small entity.

☒ a small entity.

A statement:

☐ is attached.

☒ was already ~~filed.~~ *claimed.*

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:

☒ small entity $250.00

☐ other than a small entity $500.00

Appeal Brief fee due $ _250.00_

4. EXTENSION OF TERM

NOTE: 37 C.F.R. § 1.704(b) ". . .an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph."

NOTE: The time periods set forth in 37 C.F.R. § 1.192(a) are subject to the provision of § 1.136 for patent applications. 37 C.F.R. § 1.191(d). See also Notice of November 5, 1985 (1060 O.G. 27).

NOTE: As the two-month period set in § 1.192(a) for filing an appeal brief is not subject to the six-month maximum period specified in 35 U.S.C. § 133, the period for filing an appeal brief may be extended up to seven months. 62 Fed. Reg. 53,131, at 53,156; 1203 O.G. 63, at 84 (Oct. 10, 1997).

☐ The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

WARNING: The provisions of 37 CFR § 1.136 do not apply in an ex parte reexamination. Any requests for extension must be made pursuant to 37 CFR 1.550(c).

(complete (a) or (b), as applicable)

(a) ☐ Applicant petitions for an extension of time under 37 C.F.R. § 1.136 (fees: 37 C.F.R. § 1.17(a)(1)-(5)) for the total number of months checked below:

Extension (months)	Fee for other than small entity	Fee for small entity
☐ one month	$ 120.00	$ 60.00
☐ two months	$ 450.00	$ 225.00
☐ three months	$ 1,020.00	$ 510.00
☐ four months	$ 1,590.00	$ 795.00
☐ five months	$ 2,160.00	$1,080.00

Fee: $_____

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

☐ An extension for _____ months has already been secured, and the fee paid therefor of $ _____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request $ _____

or

(b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee $ ___*250.00*___

Extension fee (if any) $ _____

TOTAL FEE DUE $ ___*250.00*___

6. FEE PAYMENT

☐ Attached is a ☐ check ☐ money order in the amount of $ _____

☒ Authorization is hereby made to charge the amount of $ ___*250.00*___

    ☒ to Deposit Account No. ___*50-0310*___

    ☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

***WARNING:** Credit card information should not be included on this form as it may become public.*

☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

☒ A duplicate of this paper is attached.

7. FEE DEFICIENCY

NOTE: If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to change the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, 1065 O.G. 31-33.

☒ If any additional extension and/or fee is required,

AND/OR

☒ If any additional fee for claims is required, charge:

    ☒ Deposit Account No. ___*50-0310*___

    ☐ Credit card as shown on the attached credit card information authorization form PTO-2038.

***WARNING:** Credit card information should not be included on this form as it may become public.*

Date: June 29, 2006

Reg. No.: 33,701

Customer No.:

(signature)
SIGNATURE OF PRACTITIONER

Daniel H. Golub
(type or print name of practitioner)

1701 Market Street
P.O. Address

Philadelphia, PA 19103

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CERTIFICATION OF SERVICE

The signature below certifies that:

☐ A copy of this paper has been served on all opposing parties via ☐ Express Mail ☐ Other (specify) _____ on _____ (date) addressed as follows:

(1)

Name _____

Address _____

_____

(2)

Name _____

Address _____

_____

I hereby declare that all statement made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

_____

Signature of Practitioner

_____

(type of print name of practitioner)

_____

Address

_____

Reg. No.:

Tel. No.:

Customer No.:

_____

Signature of person making declaration

_____

(type or print name of person making declaration)

_____

Address)

_____

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